

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the Whangarei District Council hearing on Plan Changes 82 A and B, 88 A to J, 109, 115, 136, 143, 144, 145, 147 and 148 to the Whangarei District Plan (PC8888 Urban and Services Hearing)

AND

IN THE MATTER

of submissions and further submissions by Fonterra Limited
(Submitter 202 / Further Submitter 334)

WRITTEN STATEMENT OF DEAN MICHAEL CHRYSTAL FOR FONTERRA LIMITED

6 NOVEMBER 2019

1. INTRODUCTION

- 1.1 My full name is Dean Michael Chrystal. I am a Director of Planz Consultants Limited (**Planz**), a planning consultancy based in Christchurch, Dunedin and Auckland. I hold a Bachelor of Regional Planning degree and am an accredited Commissioner. I have been employed in the practice of Planning and Resource Management for over 30 years, both in New Zealand and the United Kingdom.
- 1.2 I have previously been involved in, and continue to be involved in, gaining resource consents for a number of Fonterra Limited's (**Fonterra**) manufacturing site developments. I have also provided evidence for Fonterra on a number of district plans throughout the country in relation to its manufacturing sites.
- 1.3 I am familiar with the Kauri Milk Processing Site (**Kauri Site**), which is located in the Whangarei District, and have provided planning evidence on previous plan changes to the operative Whangarei District Plan (**District Plan**) arising out of the rolling District Plan Review process being undertaken by Whangarei District Council (**Council**).
- 1.4 My firm advised Fonterra in respect of its submission and further submission on the plan changes which are the subject of this hearing. Planz has since been asked to review Council's section 42A Reports and provide advice on the recommendations on Fonterra's submissions and further submissions which are the subject of this '**PC8888 Urban and Services Hearing**'.
- 1.5 While Fonterra's submission (and further submission) advised that Fonterra wished to be heard in support of its submissions, following a review of the section 42A Reports, and given the nature of plan changes and Fonterra's submission, it has been decided that hearing attendance is not necessary. However, I have prepared this written statement for the Hearing Panel to consider as it deliberates on matters covered by this hearing.
- 1.6 Whilst this is a Council Hearing and whilst acknowledging that this is a written statement, I acknowledge that I have read and am familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court updated Practice Note 2014, and agree to comply with it. I confirm that the issues addressed in this written statement are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2. STATEMENT SCOPE

- 2.1 The Kauri Site, located on State Highway 1 (**SH1**) approximately 10km north of Whangarei, is Fonterra's key operational interest in the Whangarei district. The site directly employs about 430 people. The Kauri Site is located in a Strategic Rural Industrial Zone (**SRIZ**) under the District Plan.
- 2.2 Given Fonterra's area of interest, Fonterra submitted (and further submitted) on five of the plan changes that are part of this PC8888 Hearing. The plan changes submitted on were - Plan Change 148 Part A – Strategic Directions, Plan Change 136 – Three

Waters Management, Plan Change 109 – Transport, Plan Change 82B – Lighting and Plan Change 82A – Signs. Fonterra’s submissions and further submissions on these plan changes are assessed in the Parts 1, 2, 9 and 10 section 42A Reports.

- 2.3 Fonterra, in its submission, generally supported the proposed plan changes, subject to amending some provisions to address issues identified by Fonterra in specific submission points. In the context of these submissions and the section 42 Report recommendations, Fonterra has decided not to pursue, through this statement, any further changes to the plan changes that are the subject of this PC8888 Hearing in relation to its submission and further submission. This is because in relation to Fonterra’s submissions (and further submissions), the section 42A Report recommendations are aligned with the submission points, the section 42A Report recommendations will appropriately provide for the sustainable management of the district’s land resource or the submission points are no longer being pursued.
- 2.4 However, for the purpose of completeness, I have provided an overview of the submissions (and further submissions) in **paragraphs 2.5 and 2.6** below, and where appropriate, comment on the reason that the section 42A Report’s recommendations are accepted and/or the submission point is no longer being pursued.
- 2.5 In summary, Fonterra’s submissions points on the PC8888 Hearing plan changes were as follows:

(a) **Plan Change 148 Part A – Strategic Directions:**

- (i) Fonterra opposed¹, in part, the chapter overview and requested an amendment which recognised the protection of strategic business and industry within the district as a key resource management issue.
- (ii) Fonterra supported², in part, Objective SD-O5 and Policy SD-P2, but sought amendments whereby the objective and policy clearly referred to ‘reverse sensitivity’ rather than ‘incompatible activities’.
- (iii) Fonterra sought the retention³ of Policy SD-P39 (now Policy SD-P29), as notified, as the policy sought to not materially increase the potential for reverse sensitivity effects in the Rural Area.
- (iv) Fonterra requested the inclusion of new ‘reverse sensitivity’ and ‘strategic rural activities’ objectives and policies for Rural Areas and the SRIZ.

The recommendation of the section 42A Report is to reject these submission points on the basis that the existing plan provisions adequately provide for reverse sensitivity considerations and the ongoing operations of strategic rural industries⁴. Having once again reviewed the

¹ Submission accepted in part (Sub. No. 202.1) with the section 42A Report recommending amendments to the chapter overview which recognise, as a significant resource management issue, *“the protection of strategic business and industry”* (Rpt. 2Ba – paras 58-76).

² Submissions accepted (Sub. No. 202.2 and 202.3) (Rpt. 2Bb – paras 109-122 and Rpt. 2Bc – paras 214-244).

³ Submission accepted (Sub. No. 202.8) (Rpt. 2Bc – paras 401-406).

⁴ Submissions rejected (Sub. No. 202.4 to 202.7) (Rpt. 2Bb- paras 195-207 and Rpt. 2Bc – paras 407-427).

Strategic Directions chapter of the District Plan, as well as the objectives and policies that apply to the district's rural areas and the SRIZ, I am willing to accept the opinion reflected in the section 42A Report.

(b) **Plan Change 136 – Three Waters Management:**

- (i) Fonterra supported⁵ Policy TWM-P6 as it is appropriate that the threshold for private stormwater systems is to avoid significant effects.
- (ii) Rule TWM-R7, which regulates increases in impervious areas, was opposed⁶ by Fonterra as it considered that sites located in the SRIZ should be exempted from this rule.

The section 42A Report, in making recommendations, identifies that the rule applies to the Business Zone, not SRIZ. I agree that this is the case.

(c) **Plan Change 109 - Transport:**

- (i) Fonterra supported,⁷ in part, Objective TRA-O5 (Urban Design) but requested amendments to reflect that urban design expectations need to reflect those reasonably expected for the zone.
- (ii) In relation to the transport policies, Fonterra requested amendments, for the reasons outlined in the submission, to Policies TRA-P3⁸ (Transport Network Capacity), TRA-P8⁹ (Vehicle Crossings and Access), TRA-P11¹⁰ (Bicycle Parking) and TRA-P12¹¹ (Charging Stations).

The submissions have been accepted (Policy TRA-P8), accepted in part (Policy TRA-P11) and otherwise rejected. Fonterra consider that while some of the issues raised in the submission points remain valid, it has decided not to pursue these submission points further.

- (iii) Fonterra requested the retention of Rules TRA-R8 and TRA-R10 to TRA-R12 as notified¹².
- (iv) While supporting, in part, Rule TRA-R5 (Vehicle Crossings and Access – Design and Location) and TRA-R13 (EV Charging Stations – Number Requirements), Fonterra sought amendments for the reasons outlined in the submissions.

⁵ Submission accepted (Sub. No. 202.9) and policy effectively retained as notified (Rpt. 9Be – paras 403-418).

⁶ Submission rejected (Sub. No. 202.10) as the rule does not apply to the SROZ (Rpt. 9Bh – paras 442-448).

⁷ Submission accepted in part (Sub. No. 202.11) with objective amended in a manner generally consistent with this submission point (Rpt. 9Ae -paras 68-90).

⁸ Submission rejected (Sub. No. 202.12) as, although the issue raised is acknowledged, it is important that developers bear the costs of upgrades and extensions where appropriate (Rpt. 9Af – paras 91-128).

⁹ Submission accepted (Sub. No. 202.13) and policy amended as requested (Rpt. 9Af – paras 91-128).

¹⁰ Submission accepted in part (Sub. No. 202.13) with the section 42A Report stating (para 123) that the policy has been amended to address the submission and similar submissions. However, in my opinion, the inclusion of “...except where not appropriate” does not provide certainty for resource users. (Rpt. 9Af – paras 91-128).

¹¹ Submission rejected (Sub. No. 202.15) as ‘providing’ is more consistent with plan provisions (Rpt. 9Af – paras 91-128).

¹² Submission accepted in part (Sub. No. 202.17) as rules have been retained, albeit with minor amendments arising from other submissions (Rpt. 9Ai – paras 149-174 and Rpt. 9Al – paras 191-211).

The section 42A Report has recommended the rejection of these two submission points¹³. Fonterra has decided not to pursue these submission points further.

- (v) While supporting the 'Minimum On-site Car and Bicycle Parking Requirements' contained in Appendix 1A of the transportation chapter, Fonterra sought an amendment to more clearly identify that the parking Kauri Site's parking exemption applies to all land utilised by Fonterra that is zoned SRIZ or Fonterra Kauri Milk Processing SRIZ (Sub. No. 202.19).

The section 42 Report¹⁴ recommends the rejection of this submission point on the basis that it is beyond the scope of this PC8888 hearing. While considering that the clarification requested in the submission is appropriate, I accept that the submission is out of scope and therefore do not discuss this matter further.

(d) **Plan Change 82B - Lighting:**

- (i) Fonterra supported, in part, the chapter overview¹⁵, and Objective NL-O3¹⁶ and requested amendments to acknowledge the importance of lighting for health, safety and security and that the chapter overview should identify that lighting should be 'designed' not 'angled' to minimise potential light pollution.
- (ii) Fonterra opposed, in part, Objective NL-O2 (Adverse Effects) and Policy NL-P1 (Amenity and Character) on the basis that these provisions should refer to not adversely affecting, or detracting from, the amenity of an area, rather than artificial lighting maintaining or enhancing the amenity and character of an area¹⁷.

The section 42A Report has rejected these submission points and while the matter raised in the submissions are still considered valid, Fonterra has decided to not pursue them further.

- (iii) Fonterra opposed, in part, Policy NL-P3¹⁸ (Mineral Extraction) as it was considered that the policy should recognise the functional and operational lighting needs of all 'strategic business and industry', not just mineral extraction activities.

The section 42A Report rejects the submission, and amendments sought, as 'strategic business and industry' is not defined in the regional policy statement or the District Plan. While I consider the matters raised in the

¹³ Submissions rejected (Sub. No. 202.16 and 202.18) for the specified reasons outlined in paras 163 and 225 respectively of the section 42A Reports (Rpt. 9Ai – paras 149-174 and Rpt. 9Am – paras 212-227).

¹⁴ As discussed at paragraph 293 of the section 42A Report (Rpt. 9Aq -paras 270-301).

¹⁵ Submission accepted (Sub. No. 202.20) with chapter overview amended as requested (Rpt. 10Bc – paras 183-189).

¹⁶ Submission accepted (Sub. No. 202.22) with objective amended as requested (Rpt. 10Bd – paras 190-198).

¹⁷ Submissions rejected (Sub. No. 202.21 and 202.23) as the proposed wording does not encourage improved amenity outcomes through lighting (Rpt. 10Bd – paras 190-198 and Rpt. 10Be – paras 199-212).

¹⁸ Submission rejected (Sub. No. 202.24) (Rpt. 10Be – paras 199-122).

submission are valid given 24 hour operations not restricted to mineral extraction, given the appropriately permissive rule framework proposed, I do not discuss this submission further.

- (iv) Fonterra requested various amendments to Rules NL-R2¹⁹ (Any Artificial Lighting), NL-R3²⁰ (Any Artificial Road Lighting), NL-R4²¹ (Any Health and Safety or Navigational artificial Lighting) and NL-REQ1²² (Lighting Measurement).

The section 42A Report recommendations appropriately address the matters raised in Fonterra's submissions.

(e) **Plan Change 82A - Signs:**

- (i) Fonterra supported, in part, the chapter overview²³ but requested amendments to acknowledge that signs are important for conveying information, including safety information, and that it is important that signs do not detract from amenity values (rather than requiring signage to maintain amenity values).

The section 42A Report has accepted this submission in part, but effectively rejected the requested amenity value amendment. As outlined in the following paragraph, the aspect of this submission that has been rejected is not being pursued further.

- (ii) Similar to the matter raised in relation to lighting provisions (**paragraph 2.5(d)(ii)** above), Fonterra requested amendments to Objectives SI-O1 (Provisions for Signs) and SI-O2 (Illuminated Signs) and Policies SI-P1 (Scale and Intensity) and SI-P7 (Illuminated Signs (Amenity and Character))²⁴ on the basis that these provisions should refer to signs not adversely affecting, or detracting from, the amenity of an area, rather than needing to maintain the amenity and character of an area .

The section 42A Report has rejected these submission points and while the matter raised in the submissions are still considered valid, Fonterra has decided to not pursue them further.

¹⁹ Submission accepted in part (Sub. No. 202.25) (Rpt. 10Bg – paras 216-229).

²⁰ Submission rejected (Sub. No. 202.26) as internal private roads are not captured by the definition of road (Rpt. 10Bh – paras 230-232).

²¹ Submission accepted in part (Sub. No. 202.27) with minor amendments made to the requested wording to better align with rule table structure (Rpt. 10Bi – paras 233-235).

²² Submission accepted in part (Sub. No. 202.28) with the rule amended to identify that illuminated signage rules are contained in the signage chapters (Rpt. 10Bm – paras 255-257).

²³ Submission accepted in part (Sub. 202.29) (Rpt. 10Ab – paras 37-41).

²⁴ Submissions rejected (Sub. No. 202.30, 202.31, 202.32 and 202.35) as the careful use and placement of signage has the ability to enhance amenity values of an area, particularly with regard to wayfinding and creating a sense of place (para 49) (Rpt. 10Ac – paras 42-51 and Rpt. 10Ad – paras 52-68).

- (iii) Fonterra also submitted on Policies SI-P3²⁵ (Health and Safety Signs) and SI-P4²⁶ (Traffic Safety Signs). The retention of Policy SI-P3, as notified, was requested, while amendments to Policy SI-P4 were requested.

The section 42A Report recommends the retention of both policies as notified, and I am comfortable with these recommendations.

- (iv) Fonterra requested various amendments to the signage rules, including a new permitted activity rule for illuminated signs²⁷ and amendments to Rules SI-R2²⁸ (Any Sign Visible from Beyond the Site on which it is Located), SI-R10²⁹ (Any Sign within ... the Strategic Rural Industries Zone) and SI-R17³⁰ (Any Illuminated Sign).

The section 42A Report recommendations appropriately address the matters raised in Fonterra's submissions.

2.6 Fonterra also further submitted on a number of submissions made by other parties. These further submissions can be summarised as:

- (a) Opposed a submission³¹ which sought to amend Objective SD-05, which relates to reverse sensitivity issues, by replacing 'avoid' with 'manage'.
- (b) Supported a submission³² seeking an amendment to a Strategic Directions policy to ensure that potential reverse sensitivity effects from the expansion of existing activities are appropriately managed.
- (c) Supported two submissions³³ seeking amendments to Objective SUB-O5 and associated policies, including Policy SUB-P1, to ensure that potential reverse sensitivity effects from subdivision are appropriately recognised.
- (d) Supported a submission³⁴ seeking restricted discretionary activity status for a number of the transportation rules (Rules TRA-R2 to R9 and R13).

²⁵ Submission accepted (Sub. No. 202.33) (Rpt. 10Ad – paras 52-68).

²⁶ Submission rejected (Sub. No. 202.34) as the policy supports road control authorities carrying out their roles without undue restrictions (Rpt. 10Ad – paras 52-68).

²⁷ Submission accepted in part (Sub. No. 202.38) with a new permitted activity rule for illuminate signs not visible beyond the site boundary proposed (Rpt. 10Aj – paras 86-88).

²⁸ Submission accepted (Sub. No. 202.36) as the intent of the amendments agree with, but further amendments proposed to improve overall clarity and readability (para 102) (Rpt. 10Al – paras 95-107).

²⁹ Submission accepted (Sub. No. 202.37) with rule retained as notified (Rpt. 10Ap – paras 133-137).

³⁰ Submission rejected (Sub. No. 202.39) with the recommendation that new Condition 2(e) requires a suitably qualified and experienced professional to determine the brightness levels (Rpt. 10Ag – paras 76-79).

³¹ Submission rejected (Sub. No. 268.7) (Report 2Bb -paras 109-122).

³² Submission accepted (Sub. No. 129.2) with Policy SD-P2 amended as requested by the submission (Report 2Bc – paras 214–224).

³³ Submissions rejected (Sub. No. 265.7 and 264.17) as the section 42A Report stating that reverse sensitivity is appropriately addressed in the Strategic Directions and zone chapters of District Plan (Rpt. 2Cb – Para 433-453 and Rpt. 2Cc – paras 454-482).

³⁴ Submission accepted in part (Sub. No. 160.33) with the section 42A Report recommending that Rules TRA-R2 to R13 default to restricted discretionary activity, while retaining discretionary activity status for Rule TRA-R14 which relates to subdivision (Report 9Ag – paras 129-138).

- (e) Opposed two NZTA submissions³⁵ seeking amendment to the transportation access and integrated transport assessment rules (Rules TRA-R8 and TRA-R16).
- (f) Opposed, in part, a submission³⁶ from KiwiRail seeking a new rule requiring a 5m setback from the 'rail corridor boundary.
- (g) Supported two submissions which sought permitted activity status for signage (SI-R17)³⁷ and stormwater (TWM-R2)³⁸ rules, and restricted discretionary activity status where conditions are not complied with.
- (h) Supported a submission³⁹ requesting that the District Plan's hazardous substance provisions are not transferred into a separate District Plan section.

2.7 I note that Fonterra's submission, at paragraph 3.2, sought that:

- *all necessary and consequential amendments, including any amendments to the provisions themselves or to other provisions linked to those provisions submitted on, including any necessary changes to Proposed Plan Changes 148 (Part A), 147, 136, 109, 82B and 82A, Planning Maps and Consequential Amendments, and including any cross references to other chapters that may be necessary; and*
- *all further relief that is considered necessary to give effect to the concerns described above and in Attachment A below.*

2.8 For the sake of brevity (and clarity), I confirm that I either generally support the recommendations and associated reasoning contained in the section 42A Reports, or it has been decided to not pursue the submissions points further, in relation to all of the submissions summarised in **paragraphs 2.5** and all of Fonterra's further submissions as summarised in **paragraph 2.6** above.

3. CONCLUSION

3.1 Overall, as outlined in **Section 2** of this statement, all of Fonterra's submission points (and further submissions) either align with the section 42A Report recommendations, are considered to appropriately provide for the sustainable management of the district's land resource or are no longer being pursued by Fonterra.

³⁵ Submissions rejected (Sub. No. 240.36 and 240.43) as Rule TRA-R8 defaults to a restricted discretionary activity when permitted activity rule conditions are not complied with, and the section 42A Report recommends not including floor space criteria to Rule TRA-R16 (Rpt. 9Ai – paras 149-174 and Rpt. 9Ao -para 239-264).

³⁶ Submission rejected (Sub. 265.30) as the TRA chapter does not provide for the rail network, rather the rail network is provided for as regionally significant infrastructure (Rpt. 9Aw – paras 339-342).

³⁷ Submission rejected (Sub. No. 36.14) as amending the status of this rule was not needed given new permitted activity rule proposed for illuminated signs (Report 10At – paras 153-168).

³⁸ Submission rejected (accepted in part) (Sub. No. 268.170) as the section 42A Report (Report 9Bf – paras 419-429) recommends the deletion of this rule as the regional plans appropriately manage stormwater discharges from impervious areas. The section 42A Report also recommends that if the rule is retained, then restricted discretionary activity status is appropriate.

³⁹ Submission rejected (Sub. No. 101.34) as the proposed restricting is an intern measure until a proposed hazardous substances plan change is notified in the future as part of the rolling review (Report 10 – paras 192-196).

3.2 For this reason, Fonterra are not pursuing, through this statement, any further changes to the plan changes that are the subject of this PC8888 Hearing.



Dean Chrystal
6 November 2019